



October 24, 2001

Ms. J. Middlebrooks  
Assistant City Attorney  
City of Dallas  
2014 Main, Room 501  
Dallas, Texas 75201

OR2001-4841

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153837.

The Dallas Fire Department (the "department") received a request for "any and all information regarding the investigation of a fire which occurred at 3821 Maryland, Dallas, Dallas County, Texas on July 13, 1999." You indicate that the department will release some responsive information to the requestor. You claim that a portion of the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We will first address your responsibilities under the Public Information Act. Subsections 552.301(a) and (b) of the Government Code provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

You inform us that the department received the request for information on August 3, 2001. You did not request a decision from this office until August 21, 2001. Consequently, you failed to request a decision within the ten business day period mandated by section 552.301(b) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the deadlines in section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). The department argues that the submitted information is excepted under sections 552.101 and 552.130 of the Government Code. Sections 552.101 and 552.130 of the Government Code provide compelling reasons to overcome the presumption of openness. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). Because the assertion of sections 552.101 and 552.130 of the Government Code provide compelling reasons to overcome the presumption of openness, we will address your arguments.

We next note that the submitted information includes information that is subject to section 552.022. Section 552.022(a) enumerates categories of information that are public information and not excepted from required disclosure under chapter 552 of the Government Code unless they are expressly confidential under other law. The information that you submitted to us for review appears to contain completed reports, which falls into one of the categories of information made expressly public by section 552.022. *See* Gov't Code section 552.022(a)(1). We have marked the information which falls under the purview of section 552.022(a).

Section 552.022(a)(1) states that a completed report, audit, evaluation, or investigation made of, for, or by a governmental body is expressly public unless it is excepted under section 552.108 of the Government Code or is expressly confidential under other law. You do not argue that section 552.108 is applicable to this information. The Fire Investigation and Fire Alarm Reports are therefore public information not excepted from public disclosure, except to the extent that any of this information is expressly confidential under other law. As section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," we will address your section 552.101 arguments for the information which is subject to disclosure under 552.022.

You argue that the 9-1-1 caller's address and originating telephone number are excepted from disclosure pursuant to section 552.101 in conjunction with section 772.318 of the Health and Safety Code. In Open Records Decision No. 649 (1996), which interpreted section 772.318 of the Health and Safety Code, we examined several confidentiality provisions in chapter 772 of the Health and Safety Code. Sections 772.118, 772.218 and 772.318 of the Health and Safety Code make confidential the originating telephone numbers and addresses of 911 callers furnished by a service supplier. See Open Records Decision No. 649 (1996). Section 772.118 applies to emergency communication districts for counties with a population over two million. Section 772.218 applies to emergency communication districts for counties with a population over 860,000. Section 772.318 applies to emergency communication districts for counties with a population over 20,000. Subchapter E, which applies to counties with populations over 1.5 million, does not contain a confidentiality provision regarding 911 telephone numbers and addresses. Health & Safety Code § 772.401, *et seq.* Thus, to the extent that the originating telephone number and address of the 9-1-1 caller were furnished by a service supplier, and if the emergency communication district here is subject to section 772.118, 772.218, or 772.318, the caller's address and originating telephone number are excepted from public disclosure based on section 552.101 as information deemed confidential by statute. If, on the other hand, the emergency communication district here is not subject to section 772.118, 772.218, or 772.318, or if the information was not furnished by a service supplier, the caller's address and telephone number are not protected under section 552.101 and must, therefore, be released.

Section 552.101 also encompasses the doctrine of common law privacy. Information is protected by the common law right of privacy when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. See *Industrial Foundation v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert denied*, 430 U.S. 931 (1977); see also Open Records Decision No. 611 at 1 (1992). Prior decisions of this office have found that financial information relating to an individual "ordinarily satisfies the first requirement of common law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities." Open Records Decision No. 373 at 3; see Open Records Decision No. 523 (1989). In particular cases, there may be a public interest in access that will overcome the second requirement of the common law privacy test; whether there is a public interest in this information sufficient to justify its disclosure must be decided on a case-by-case basis. Open Records Decision No. 373 at 4. Applying the second requirement of the common law privacy test in this case, we find that the information you seek to withhold under common law privacy is of legitimate concern to the public. We conclude that the information pertaining to insurance policies in the Fire Investigation Report must be released to the requestor.

We will now address your section 552.101 and 552.130 arguments for the remainder of the submitted information, which is not subject to the purview of section 552.022.

Article 5.46(A) of the Insurance Code provides for the release of information by an insurance company investigating a fire loss in which damages or losses exceed \$1,000.00 to the chief of an established fire department or a peace officer on request. Subpart (D) of the article provides that those receiving such information "shall hold the information in confidence until such time as its release is required pursuant to a civil or criminal proceeding." You explain that the department obtained information from an insurance company as a part of the department's investigation. Therefore, assuming that the information at issue has not previously been released pursuant to a civil or criminal proceeding, the submitted information that was provided to the department under article 5.46 must be withheld from disclosure under section 552.101.

Criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. You indicate that the information submitted for our review is CHRI generated by TCIC and NCIC. Accordingly, the information is excepted from required public disclosure by section 552.101 of the Government Code.

The submitted information also contains a Texas driver's license number. Section 552.130 provides in relevant part:

- (a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

We agree that the highlighted Texas driver's license number must be withheld under section 552.130. The remainder of the submitted information must be released to the requestor.

In summary, CHRI and the information provided to the department under article 5.46(A) of the Insurance Code are confidential by law and must be withheld from disclosure under section 552.101. To the extent that the originating telephone number and address of the 9-1-1 caller was furnished by a service supplier, and if the emergency communication district here is subject to section 772.118, 772.218, or 772.318, the caller's address and originating telephone number are excepted from public disclosure based on section 552.101. The highlighted Texas driver's license number must be withheld under section 552.130. The remainder of the submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839.

The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/seg

Ref: ID# 153837

Enc. Submitted documents

c: Ms. Carrie J. Phaneuf  
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(w/o enclosures)